



Washington State
Department of Health
Podiatric Medical Board
Meeting Minutes
January 20, 2005

The meeting of the Washington State Podiatric Medical Board was called to order by David Bernstein, DPM, Chair, at 9:30 a.m. The meeting was held at the Holiday Inn, 17338 International Boulevard, Seattle, WA 98188.

Board Members

Participating:

David Bernstein, DPM, Chair
James Porter, DPM
Stewart Brim, DPM, Vice Chair
Gerald Kuwada, DPM
William Ith, Public Member

Staff Participating:

Arlene Robertson, Program Manager
Gail Yu, Assistant Attorney General
Peter Harris, Staff Attorney
Judy Young, Staff Attorney
Holly Rawnsley, Program Manager
Lisa Noonan, Program Manager
Maryella Jansen, Deputy Executive Director

Guests in Attendance:

Martin Ziontz, Attorney, Washington
State Podiatric Medical Association
John McCord, DPM, member Washington
State Podiatric Medical Association

OPEN SESSION

1. Call to Order
 - 1.1 Approval of Agenda
The agenda was approved as published.
 - 1.2 Approval of Minutes - September 30, 2004
The September 30, 2004 meeting minutes were approved as submitted.

- 1.3 Approval of Conference Call Minutes - October 27, 2004
Conference call minutes for October 27, 2004 were approved as submitted.
- 1.4 Approval of Conference Call Minutes - December 2, 2004
Conference call minutes for December 2, 2004 were approved as submitted.
2. Settlement Presentations
 - 2.1 Marc A. Kravette, DPM - Docket No. 03-11-A-1058PO (Case #2003-02-0001PO) - Presentation by Judy Young, Staff Attorney.
Ms. Young provided a summary of the case and submitted a Withdrawal of Statement of Charges for the Board's consideration.

The Board's determination was made in Executive Session and the Respondent will be advised of the decision by mail. Dr. Brim, reviewing board member, did not participate in the proceedings.

3. Scope of Practice Issues.
 - 3.1 Selling certain medications and devices by podiatric physicians as it relates to the Rebating law, Chapter 19.68 RCW.
Clarification requested from the Washington State Podiatric Medical Association.
 - 3.1.1 Center for Medicare & Medicaid Services final rule addressing physician self-referrals.
Background information relevant to issue 3.1.

ISSUE

The Washington State Podiatric Medical Association has requested clarification regarding whether the rebating statute, 19.68 RCW, applies to providers selling products directly to patients. Some licensees are interested in making products that are difficult to find available to their patients. The office would not be a retail outlet but likely the charges to the patient would include additional charges above the actual cost of the item. The Association is trying to assist its members to comply with the law to avoid disciplinary action.

ACTION

The Board discussed that the rebating statute is intended ensure that a health care practitioner is compensated only for the professional services that he or she provides. A practitioner cannot receive anything of value for making a referral to another

practitioner or particular business or product. If the practitioner furnishes a recommended or prescribed drug or other product to a patient, it is a violation for the practitioner to make a profit on it or to receive a rebate or financial incentive from the business that makes the product. If a patient is referred to a business for diagnostic or treatment services and the practitioner has an interest in that business, the practitioner it is not in violation so long as the practitioner discloses the ownership interest to the patient in writing with a list of alternative providers and a statement that the patient will not be treated differently by the practitioner if the patient chooses an alternative provider. This discussion was consistent with the most recent direction given by the division pertaining to the rebating statute.

It was noted that in some cases it may be difficult to identify costs associated with a particular product. There was also discussion about how Federal laws might also apply to this type of situation.

- 3.2 Infections Associated with footbaths/pedicures
 - 3.2.1 Compile educational condition/symptom list for pedicurists to recognize at risk clients.

ISSUE

As a follow up with the Department of Licensing, Cosmetology Program, regarding footbaths and pedicures the Board had indicated it would provide a list of conditions/symptoms that could be readily observed by pedicurists to identify individuals whose health might be compromised when using a whirlpool footbath or if an invasive injury occurred to the toe or foot.

ACTION

A number of conditions/symptoms were identified. The pedicurist should ask the client about conditions such as diabetes, poor circulation, and poor sensation. A physical observation should be made for open wounds, including any type of drainage; redness and swelling or other abnormal color; skin that is thin, tight, shiny or lacking hair growth.

Staff will forward the list to the Department of Licensing to be used in training and/or educational purposes. The information could also be used on both agencies Web pages to educate consumers.

- 3.3 Letter from Washington State Podiatric Medical Association, Standing Committee on Peer Review, addressed to the Washington State Physical Therapy Board regarding "sharp debridement" by physical therapists.

ISSUE

Although this letter had been included as information, Mr. Zientz brought up the topic by sharing the response from the Physical Therapy Board which indicated it was within their scope of practice to debride devitalized tissue.

ACTION

The Board discussed what was meant by devitalized tissue and "sharp debridement". It was noted that bleeding must be present (viable tissue) for healing to occur. The board indicated that it considered "sharp debridement" to be a surgical procedure which would be limited to physicians, including podiatric physicians, and other primary care providers such as physician assistants and ARNPs.

Staff was asked if this issue had been forwarded to other professions for comment which is standard Department policy for issues that impact multiple professions. Staff had not received the issue for comment. Staff will obtain more information on why the issue was not shared with other professions for comment.

4. Rules

4.1 Review proposed pain management rules

4.1.1 Draft rules

4.1.2 Guidelines for Management of Pain

4.1.3 Significant Legislative Rules Analysis

4.1.4 Small Business Economic Impact Statement

ISSUE

Draft rules, the Board's Guidelines for Management of Pain, Significant Legislative Rules Analysis, and the Small Business Economic Impact Statement pertaining to pain management were all reviewed. Since these have been in progress for some time, the Board was asked whether it wanted to continue with the rules process.

ACTION

The Board determined that it did want to continue with the rules process. The Board eliminated one sentence from the draft rules. Staff will proceed with getting the CR102

filed for hearing.

5. Program Manager Reports
5.1 Budget Report

The November 2004 interim operating report was reviewed. The Board was over expended in its allotment. The majority of overages were in investigative and staff attorney services related to complaints and disciplinary actions.

5.2 Recent Articles pertaining to Disciplining of Bad Docs

Articles related to disciplinary actions against doctors and related malpractice litigation were shared with the Board. No action was required.

6. Executive Director Reports

6.1 Department/Division Updates

Maryella Jansen, Deputy Executive Director, provided an update on the changes that have occurred as a result of the staff moves.

6.2 Legislative Updates

Ms. Jansen outlined the issues she thought might be considered by the Legislature pertaining to health care. At this point very few bills have been received for review and analysis.

CLOSED SESSION

7. Statement of Allegations/Stipulation to Informal Disposition Presentations (as needed)

There were no informal disposition presentations.

8. Disciplinary Case Reviews - Reviewing Board Member Reports

CASE NUMBER

CASE DISPOSITION

2003-04-0002PO

Closed no cause for action; insufficient evidence

9. Compliance Reports

There were no compliance reports.

10. Application Review

There were no applications for review.

The morning session adjourned at 12:20 p.m.

The afternoon session reconvened at 2:00 p.m.

OPEN SESSION

1:00-3:00 p.m. - Board Member Training

Gail Yu, Assistant Attorney General, provided an overview of the administrative laws applicable to boards. The overview included the Open Public Meetings Act, administrative rule-making, authority of boards, adjudicative proceedings, and ethics requirements of the Executive Conflict of Interest Act.

Peter Harris, Staff Attorney, provided an overview of the complaint process, investigation of complaints, and case review and disposition. Mr. Harris outlined the sections of the Uniform Disciplinary Act that pertain to violations and sanctions and identified the evidence that is needed to take an action. He also explained the differences in disciplinary versus informal actions and when notices of corrections might be considered to resolve a case.

Staff responded to questions from the board members.

The meeting adjourned at 3:30 p.m.

Respectfully Submitted

Arlene A. Robertson
Program Manager

NOTE: PLEASE VISIT THE PODIATRIC MEDICAL BOARD'S WEB SITE FOR FUTURE AGENDAS AND MINUTES. WWW.DOH.WA.GOV , GO TO LICENSING AND CERTIFICATION AND YOU WILL FIND A LIST OF THE HEALTH PROFESSIONS, GO TO PODIATRIC PHYSICIANS FOR AGENDAS AND MINUTES.
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